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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/533,411 | 10/17/2005 | Michael Brian Edward Bremner | 1171/42784/157-PCT-US | 9055 |
| 279 7590 02/06/2008 Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd. 105 West Adams Street Suite 3600 Chicago, IL 60603 | | | EXAMINER OSTRUP, CLINTON T | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,411

Applicant(s)

BREMNER ET AL.

Examiner

Clinton Ostrup

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/7/06.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15-17, 26, 29 & 31 is/are rejected.
- 7) ☒ Claim(s) 1-17 and 26-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/29/2006 & 7/28/2006.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claims 1-17 and 26-36 are pending in this application. Claims 18-25 have been cancelled.

Priority

The examiner acknowledges this application was filed as a United States National Phase Application of International Application Serial No. PCT/NZ03/00244 filed October 30, 2003, which claims priority from New Zealand Application No. 5222375, filed November 1, 2002.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

A non-initialed and/or non-dated alteration changing April 27, 2005 to April 29, 2005 appears 9 lines down on the first page of the Declaration.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "5" and "6" have both been used to designate a humidification chamber. See: page 6, lines 27 and 29 of the specification.

The drawings are objected to because shading has caused the structures referred to in figures 2 and 3 to be obscure and the reference character "35" cannot be clearly seen. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are

required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: page 6, line 27 refers to a humidification chamber as reference number "5" and page 6, line 29 refers to the humidification chamber as reference number "6."

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Appropriate correction is required.

Claim Objections

Claims 1-17 & 26-36 are objected to because of the following informalities:

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In the claims, when the term "the" or "said" is used, the word following the term "the" or "said" must have proper antecedent basis. The terms "the" and "said" appear numerous times in the claims without proper antecedent basis for the limitations following the terms "the" and "said."

For example, Claim 1 recites the limitation "said gases flow" in lines 8-9; however, there is insufficient antecedent basis for this limitation in the claim. Applicant has provided antecedent basis for "said flow of gases" and they are reminded to be consistent in their terminology. Claims 3, 4, 7, 8, 26, 29 & 31 are objected to for reasons analogous to those of claim 1. Appropriate correction is required.

Claims 11-14 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from a multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 11-14 have not been further treated on the merits.

Claim 17 is objected to as it appears applicant intended to have an "a" before "water heating means" and for examination purposes claim 17 was read as such.

Claims 27, 28, 30 & 32-36 are objected to because these claims depend from cancelled claims.

Any remaining claims are objected to as depending from an objected base claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10, 15-17, 26, 29 & 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because it is unclear what constitutes the "other attributes."

Claims 1 and 31 are further indefinite because it is unclear what applicant means by "breathable means."

Claims 7-10 are indefinite because it is unclear what applicant meant by "breathable or filter material."

Claim 2 is indefinite because it is unclear what is included in "said other attribute includes but is not limited to..."

Claim 31 is indefinite because it is unclear what constitutes the "other attributes."

, Any remaining claims are rejected as depending from a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-10, 15-17 & 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray, (EP 0567158A2).

Murray discloses a system for delivering a supply of gases (6) to a patient comprising gases supply means (4) providing a flow of gases humidification means (Figure 1) receiving said gases from said gases supply means (4) and capable of

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humidifying said gases up to a level of humidity prior to delivery to said patient, transportation means (64) conveying said gases from said humidification means to said patient, and sensing means (34) to sense the temperature of said gases flow, said sensing means contained within a housing (26) that is releasably coupled in line between said humidification means (34) and said transportation means (64) and a breathable means is attached to said housing such that a sensor is exposed to said gases flow through said breathable means (Figure 5).

The system disclosed by Murray has a sensing means (34) contained in a cartridge (26) such that said sensor (34) is exposed to said gases flow. Murray discloses a system with an open tubular section (Figures 6 & 7) that includes a port and the housing fits into said port to seal the system (Figure 10). Murray also discloses a system an open tubular section that is covered with a microporous filter material (18) on either one side (Figures 6 & 7), or both sides (Figure 12), of the tubular section.

The system taught by Murray includes a temperature sensing means that is connected to a heating means (22). Murray teaches that the heating element is located in a humidification chamber and it heats water and gasses passing through the humidification chamber to produce humidified gasses to be provided to the patient. Murray discloses a system where connections are formed between one side of said cartridge and the other side of said cartridge or open tubular section and said transportation means (Figure 3). See: col. 1, line 25 - col. 2, line 10; and Figures 1-13.

Claims 1-6, 15-17, 26, 29 & 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Gradon et al., (6,272,933).

Gradon et al. teach a system for delivering a supply of gases to a patient comprising: gases supply means (6) providing a flow of gases, humidification means (4) receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (13), transportation means (16) conveying said gases from said humidification means to said patient (13), and sensing means (19) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing (32 or 33) that is releasably coupled in line between said humidification means (4) and said transportation means (16) and a breathable means (42) is attached to said housing such that a sensor (32 or 34) is exposed to said gases flow through said breathable means (42).

Gradon et al., teach a gas flow probe (19) with a temperature sensing means (34), a control means (11), and a flow sensing means which are connected to a control unit in a humidification system. Gradon et al., show the probe (19) in a gas flow conduit (42) being releasably positioned in a port (41) on said conduit wherein the probe (19) is exposed to the gas flow (Figures 3 & 4) to sense the temperature and flow rate. Gradon et al. teach that the flow probe is designed to provide both temperature (34) and flow rate (35) sensing of the gasses by incorporating both sensors into the flow probe.

The system disclosed by Gradon et al., has a humidification chamber (4) adapted to receive water (8), a water heating means (9) to heat said water and a means for gasses passing through the humidification chamber (Figure 5) to become humidified gasses. The system taught by Gradon et al., includes a controller (11) to control the water heating means (9) and the level of humidity or temperature of the gas flow. The

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system described by Gradon et al., provides for feedback monitoring of the temperature and gas flow by providing temperature sensors at different locations on the gas flow path (17 & 19, Figure 5). See: col. 7, line 48 - col. 11, line 24 and Figures 1-5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Gradon et al., (6,349,722 B1) and Seakins et al., (2002/0078733 A1) both of which disclose temperature and gas monitoring devices for humidified respiratory gas delivering devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clinton Ostrup whose telephone number is (571) 272-5559. The examiner can normally be reached on M-F 7:30-5 pm with alternating Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Clinton Ostrup
Examiner
Art Unit 3771




JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY C.

2/1/08